IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Criminal Appeal No.497-DB of 1997
Date of Decision: October 16, 2006

1.Chhota Singh son of Chuhar Singh son of Nachhatar Singh, Labourer resident of village Ganduan Tehsil Sunam, District Sangrur.
2.Bikar Singh son of Baldev Singh son of Kheon Singh, Labourer, resident of Village Ganduan Tehsil Sunam, District Sangrur.

.....Appellants

VERSUS

STATE OF PUNJAB

.....Respondent

CORAM:- HON'BLE MR.JUSTICE K S GAREWAL
HON'BLE MR.JUSTICE R S MADAN

PRESENT: Ms.Swati Gupta,Advocate
for the appellants.

Mr.AS Virk,Additional Advocate General, Punjab.

R S MADAN, J.

Challenge herein in this appeal is the order of conviction and sentence recorded by the Court of the learned Sessions Judge, Sangrur in Sessions Case No.69 of 1995 whereby Chhota Singh-accused was ordered to undergo sentence of life imprisonment and to pay a fine of Rs.1,000/- and in default of payment of fine to further undergo rigorous imprisonment for one year under Section 302 of the Indian Penal Code and Bikar Singh-accused was also ordered to undergo rigorous imprisonment for life and to

pay a fine of Rs.1,000/- and in default of payment of fine to further undergo rigorous imprisonment for one year under Section 302 read with Section 34 of the Indian Penal Code.

The Police Station Sunam was put into action on the statement suffered by Tej Kaur, mother of Gurdev Singh (deceased) resident of Village Ganduan. It was stated by her that on 18-7-1995 at about 5.00 P.M. both the accused came to the house of Gurdev Singh and took him along with them on the pretext that some account matters are to be settled. After waiting for some time when Gurdev Singh did not return, Tej Kaur-complainant went towards Harijan Dharamshala for search of her son. When she reached near the Dharamshala, she heard a raula. Within her view, she noticed that Chhota Singh-accused hit his son with a Soti blow on the left scalp, as a result of which her son Gurdev Singh fell down. Bikar Singh-accused inflicted a blow with an axe (Kulhari) on the left leg of Gurdev Singh. In the meanwhile, Sita Singh-PW5 and Kundan Singh-PW6 were attracted to the spot. They also witnessed the occurrence. Gurdev Singh died at the spot on receipt of the injuries at the hands of the accused. Tej Kaur went to Chand Singh, Sarpanch of the Village and they proceeded towards the Police Station. While they were on way to the Police Station, a police party headed by Sub Inspector Harnarinder Singh-PW10 met them at petrol pump in the area of Village Jakhepal where Tej Kaur got her statement recorded Ex.PE. The said statement was sent to the Police Station through Constable Teja Singh where a formal FIR Ex.PE/2 was recorded under Section 302/34 of the Indian Penal Code. Special Report was also sent to the Illaqa Magistrate and other officers.

The investigation of the case was taken up by the Sub

Inspector, Harnarinder Singh. Tej Kaur and Chand Singh accompanied the Sub Inspector to the place of occurrence. Inquest report Ex.PD was prepared. Dead body of Gurdev Singh was sent for post mortem with an application Ex.PC. The Investigating Officer after lifting the blood stained earth from the spot, transferred the same into a small tin box and made into parcel sealed with the seal of GS belonging to ASI Gurmeet Singh-PW9, who was also a member of the police party. Recovery memo Ex.PH was prepared. A visual site plan Ex.PM was also drawn. On 19-7-1995, Dr.RS Singla-PW3 of Civil Hospital, Sunam conducted the autopsy on the dead body of Gurdev Singh and noticed the following injuries on his person:

> *"1.Swelling diffused (reddish) on left side of scalp and adjoining area on dissection there was fracture of underlying bone. There was big sub dural haemotoma. There was laceration of mangigs and brain tissue, there was intra cerevral haemorrhage.*
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> *2.Lacerated wound 3 cm x 1/3rd cm x bonedeep on left leg at front in the middle 1/3rd part. Clotted blood was present."*

He prepared the post mortem report Ex.PB and made a separate sealed parcel of belongings of the deceased and with all other documents, handed it over to S.I. Harnarinder Singh at Police Station Peeranwala Gate, Sunam.

On 23-7-1995, S.I.Harnarinder Singh and other police officials were present at the canal minor bridge, Ganduan where Sewak Singh, Member of Panchayat was associated. Both the accused came there and were arrested. They were interrogated. Chhota Singh-accused suffered a disclosure statement and in pursuance of that statement, he got recovered

Soti Ex.P17 from near the water tank close to eucalyptus trees. Bikar Singh-accused suffered a disclosure statement and got recovered an axe Ex.P18 from the wheat chaff in the varandha of his residential house.

After completion of the case, the charge against the accused was presented in the Court of Illaqa Magistrate.

In due course of time, the case was committed to the Court of Sessions.

On appearance of the accused before the Court of Sessions and after going through the report under Section 173 of the Code of Criminal Procedure and documents relied upon by the prosecution, a prima facie case under Section 302 of the Indian Penal Code was made out against Chhota Singh-accused and a case under Section 302/34 of the Indian Penal Code was made out against Bikar Singh-accused. They were charge-sheeted. The aforesaid charges were read over and explained to them in Punjabi, to which they pleaded not guilty and claimed trial.

To prove its case, the prosecution relied upon the testimony of 10 PWs.

PW1-Ramesh Kumar took the photographs of the dead body at the place of occurrence and produced the negatives Ex.P1 to P5 and photographs Ex.P6 to P10. PW2-Dinesh Kumar is a formal witness, who prepared the scaled site plan Ex.PA on 30-7-1995. PW3-Dr.RS Singla conducted the autopsy on the dead body of Gurdev Singh at 10.30 A.M. and proved the post mortem report Ex.PB. According to him, the injured received two injuries on his person. He further opined that the deceased suffered death due to shock and haemorrhage as a result of head injury which was sufficient to cause death in ordinary course of nature. The

probable time that elapsed between the injuries and death was immediate and between death and post mortem was within about 24 hours. PW4-Tej Kaur is the complainant, who not only witnessed the occurrence but also put the police party into action by suffering a statement Ex.PE. Her detailed statement has already appeared in the earlier part of the judgment while describing the facts of the case. Despite of the lengthy cross-examination, the testimony of Tej Kaur could not be shattered. PW5-Sita Singh and PW6-Kundan Singh also corroborated the testimony of PW4-Tej Kaur, complainant with respect to the occurrence and the manner in whch the accused caused injuries to Gurdev Singh (deceased) with their respective weapons near Dharamshala in the evening of 18-7-1995. PW7-Jaswinder Singh and PW8-Kewal Singh are formal witnesses. They tendered their affidavits Ex.PF and Ex.PG regarding the safe custody of parcel of blood stained earth and its despatch to the Chemical Examiner. PW9-ASI Gurmeet Singh, who remained present during investigation of the case with PW10-SI Harnarinder Singh, described the manner in which the investigation was conducted and recovery of Soti and axe was effected after the accused suffered disclosure statements before the Police.

After the case of the prosecution was closed, the statements of the accused were recorded in terms of Section 313 of the Code of Criminal Procedure in which the entire prosecution version was put to the accused, to which they pleaded innocence and false implication due to the party fiction in the Village.

After going through the prosecution evidence and the statements of the accused recorded under Section 313 of the Code of Criminal Procedure, the accused were asked to lead evidence in defence, if

any, but accused did not lead any evidence in defence.

After going through the prosecution evidence and the documents relied upon by the prosecution, the learned Sessions Judge passed the impugned order of conviction and sentence as described in the opening part of the judgment.

We have heard the learned counsel for the parties and have carefully gone through the record of the case.

According to the learned counsel for the appellants, the accused has been falsely implicated in the present case at the behest of Sarpanch of the Village due to party fiction. He further submitted that there was no motive for the accused to have committed the crime nor it is a case of pre-planned murder. Thus, it has come in the cross-examination of Dr.RS Singla where he opined that injury No.1 could be the result of fall on hard surface from the height of 10-12 feet. The doctor further opined that the possibility of both the injuries being the result of single fall cannot be ruled out.

Deriving benefit of this case, learned counsel submitted that the occurrence has not taken place in the manner as suggested by the prosecution. Therefore, the oral testimony of the witnesses do not coincide with the medical evidence produced by the prosecution.

According to PW4-Tej Kaur, mother of the deceased, she has categorically stated that both the accused has taken his son Gurdev Singh from the house on the pretext that some accounts are to be settled and that they would be back after some time. However, after waiting for some time when Gurdev Singh did not return, she went to Dharamshala. On reaching there, she heard a raula. She saw Chhota Singh-accused causing

injuries on the left scalp of Gurdev Singh (deceased) as a result of which, he fell down. Bikar Singh-accused gave a Kulhari blow on the left leg of Gurdev Singh from the sharp side. Sita Singh (PW5) and Kundan Singh (PW6) were also attracted to the scene of occurrence, who also witnessed the same.

The contention of the learned counsel that the oral testimony of PW4-Tej Kaur, PW5-Sita Singh and PW6-Kundan Singh do not coincide with the medical evidence is dis-proved from the fact that soon after the receipt of Soti blow, Gurdev Singh fell down on the ground and thereafter Bikar Singh-accused gave axe blow on the right leg from sharp side. According to the doctor, Gurdev Singh suffered death due to injury No.1, which was caused by Chhota Singh accused with Soti. It was on receipt of injuries that Gurdev Singh (deceased) fell on the ground. So this part of the story, fully finds corroboration with medical evidence.

The contention of the learned counsel for the appellant that the oral testimony of the prosecution witnesses does not coincide with the medical evidence stands repelled.

Another contention of the learned counsel was that there was a delay in lodging of the FIR. Therefore, there was sufficient time with the prosecution, which goes un-explained. In support of her arguments, she contended that according to the prosecution, the occurrence in the instant case had taken place on 18-7-1995 between 5 to 6 P.M. but the FIR was lodged at 10.15 A.M. and the Special Report have reached to the Illaqa Magistrate at 2.10 A.M. on 19-7-1995. Thus, according to the counsel, there was sufficient time with the witnesses of the prosecution to have consultation, deliberation to implicate the accused falsely in the present

case. A suggestion was also given to the witnesses of the prosecution that due to party fiction with Village Sarpanch, who had enmity with the accused, they have been falsely implicated.

We do not find any merit in the contention of the learned counsel for the appellant for the reasons that soon after the occurrence Tej Kaur (PW4) went to the Village Sarpanch and took him to the Police Staton and when they reached near the petrol pump, SI Harnarinder Singh (PW10) met her. She got her statement Ex.PE recorded at the spot, which was later on transmitted to the Police Station through Constable Sadhu Ram where a formal FIR was registered at 10.15 P.M. Admittedly, the distance between the place of occurrence and the Police Station has been 13 kilometers. It took some time to the Investigating Agency to transmit the FIR to the police. Later on Special Report was sent to the Illaqa Magistrate on 19-7-1995 at 2.10 A.M. The accused has however led no evidence in defence to substantiate about their inimical relations with the Sarpanch of the Village. Mere giving suggestions to the witnesses that relations between the Sarpanch of the Village and the accused are inimical, is no evidence in the eyes of law because none of the witnesses of the prosecution admitted this fact. These suggestions have been duly denied by the witnesses. Mere suggestions cannot be termed as an evidence on behalf of the accused. Thus for the reasons stated above, it can be safely inferred that the question of delay in lodging FIR is duly explained by the prosecution. The defence has failed to bring on the record that the relations inter se Sarpanch and the accused were strained prior to the present occurrence. The question of falsely implicating the accused does not arise. PW4-Tej Kaur is the mother of the deceased Gurdev Singh. She would have been the last person to rope

a false person as an accused when she herself has witnessed the occurrence at Dharamshala.

Another limb of the argument of the appellant was that about the date of arrest of the accused by the police, according to PW6-Kundan Singh accused were caught hold by the Sarpanch near the Gurdwara after they managed to escape from the spot where as per the statements of PW9 and PW10 accused were arrested on 23-7-1995 at 1.30 P.M. while coming from the side of Village Sangatpura. The accused when examined under Section 313 of the Code of Criminal Procedure, no where stated that they were arrested soon after the occurrence. Therefore, this plea raised by the learned counsel for the appellant lacks merit.

No other point was urged or argued before us by the learned counsel for the appellant.

For the reasons recorded above, we do not find any merit in the present appeal and the same is hereby dismissed.

(R S MADAN)
JUDGE

(K S GAREWAL)
JUDGE

October 16, 2006
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